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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

FAMECO REAL ESTATE, L.P.,

Plaintiff,

v.

TYLER BENNETT, DANIEL SPECTOR,
WINICK REALTY GROUP LLC, and
WINICK REALTY GROUP LLC NJ

Defendants.

Civil Action No. 3:12-cv-06102
(JAP) (TJB)

**REPLY DECLARATION OF MICHAEL
LEVIN IN FURTHER SUPPORT OF
MOTION FOR EXPEDITED DISCOVERY**

MICHAEL LEVIN, hereby declares, pursuant to 28 U.S.C. §
1746, as follows:

1. I am the Chief Operating Officer of Fameco Real
Estate, L.P. ("Fameco").

2. I make this Reply Declaration in further support of
Fameco's Motion for expedited discovery, and I have personal
knowledge of the facts set forth herein.

3. I make this Reply Declaration in an effort to clarify
several factual inaccuracies set forth in the Brief and

Declarations (the "Opposition Papers") submitted by defendants Tyler Bennett ("Bennett") and Daniel Spector ("Spector").

4. First, defendants' claim that Fameco failed to act in response to their breaches of their restrictive covenants is simply untrue.

5. Fameco did not immediately file an action against Bennett and Spector seeking a preliminary injunction because such an action might have an adverse impact on some of Fameco's current clients who Bennett and Spector continued to serve.

6. Instead, Fameco spent months negotiating termination agreements with Bennett and Spector that would permit them to continue servicing certain Fameco clients in certain geographical areas after their departure in exchange for agreed upon compensation. Under such an agreement clients would receive uninterrupted service, defendants would maintain client relationships otherwise barred by their restrictive covenants and Fameco would receive compensation for amending certain restrictions under those covenants.

7. Following Spector's resignation, Jonathan Rome, Fameco's in-house counsel, and I began negotiating an amicable termination with Spector. We were the only individuals to negotiate with Spector.

8. Our negotiations culminated in August 2012, when following a telephone conversation we had with Spector, I

believed that we had come to a final agreement and presented him with a written version that faithfully reflected the terms to which we verbally agreed.

9. Instead of providing comments or continuing the negotiations, Spector simply ignored the proposal, ceased communications with Fameco, and as we subsequently discovered, violated his restrictive covenant by continuing to service Fameco clients after he left the company.

10. Fameco also spent the first few weeks following Bennett's resignation attempting to convince him to stay. However, it became apparent that Bennett did not want to remain at Fameco, so Fameco attempted to reach an amicable resolution that would allow Bennett to terminate his relationship with Fameco without harming any of its clients.

11. These negotiations proved fruitless because Bennett falsely claimed he disclosed all pending deals to Fameco as he was required to do under his agreement with the Company. In fact, Fameco discovered tracking reports Bennett kept on his computer that listed many undisclosed potential deals with Fameco clients.

12. Initially, Mr. Rome and I conducted the negotiations. However, when we could not get Bennett to admit to the other deals that Fameco knew were in existence, Brandon Famous, Fameco's Chief Executive Officer, met with him on August 20,

2012. However, Mr. Famous also could not convince Bennett to admit to the undisclosed pending deals that Fameco knew were in existence.

13. In late August 2012, I attempted one last effort to negotiate with Bennett via telephone. However, Bennett became combative in this conversation and it became apparent that negotiating with him would be impossible.

14. It was at this time Bennett terminated his negotiations with Fameco.

15. Prior to Fameco filing the original Complaint on September 27, 2012, Bennett and Spector were providing limited information to Fameco regarding pending deals. It was not until after Fameco filed the Complaint that Bennett and Spector completely ceased providing Fameco with such information.

16. The willingness of Bennett and Spector to work with Fameco prior to Fameco filing the Complaint demonstrates that both Bennett and Spector recognized that Fameco was relying upon them for certain information regarding pending deals.

17. Once it became apparent to Fameco that Spector and Bennett had no intention of negotiating in a good faith manner, and instead preferred to breach their restrictive covenants, Fameco filed the Complaint in this action.

18. Fameco was always cooperative with Bennett and Spector following their termination, in an effort to avoid harm to Fameco's clients, and has not taken any improper actions.

19. Throughout their negotiations with Fameco, both Bennett and Spector were allowed access to company e-mails and any files that they needed to service Fameco customers.

20. Furthermore, Fameco has never accessed Bennett or Spector's personal e-mail accounts. In fact, any and all e-mails attached to my previously submitted Declaration were recovered from their Fameco accounts.

21. Fameco never intended to jeopardize defendants' ability to earn a living. The goal at all times was to amicably negotiate termination agreements with Bennett and Spector that would leave all parties satisfied, and not harm any Fameco clients.

22. Fameco did not initially fill out Bennett's Experience report because it was reluctant to publicly question Bennett's moral character, given that he had been with the company for approximately two years and had a reasonably good relationship with the company owners and employees.

23. Eventually, however, Bennett's continuing refusal to truthfully disclose all of the deals he was working on left Fameco with no choice but disclosure on the Experience Report that he was unwilling to do so.

24. Under their respective agreements with Fameco, Bennett and Spector have forfeited any rights they may have otherwise had to any commissions because they have blatantly breached the agreements' restrictive covenants. See Declaration of Tyler Bennett, Exhibit C, ¶ 24; Declaration of Daniel Spector, Exhibit A, ¶ 24.

25. Moreover, while Bennett ironically claims Fameco owes him a "significant" amount in commissions, to date, Fameco has only received two commissions totaling \$1,302. At the same time, Bennett owes Fameco approximately \$19,000, representing his draw balance, due at the time of his resignation. See Declaration of Tyler Bennett, Exhibit C, ¶ 27.

26. The information Fameco seeks in expedited discovery is not "freely available."

27. I have spent countless hours unsuccessfully attempting to obtain information regarding finalized and pending real estate transactions in which Bennett and Spector were involved while affiliated with Fameco and, in most circumstances, I do not even know who defendants' contacts are, or even know where to begin. This information is exclusively or particularly in the possession of Bennett and Spector.

28. Bennett and Spector are correct that their Broker-Salesperson Agreements only require that as a part of their

termination they disclose transactions for which the commission is "Earned," as that term is defined in the agreement.

29. However, the Broker-Salesperson Agreement also states that as of the termination of their relationship with Fameco, Bennett and Spector forfeited any interest they had had in any other listed sale or lease that would have otherwise been payable at the time of sale or lease. See Declaration of Tyler Bennett, Exhibit C, pg 10; Declaration of Daniel Spector, Exhibit A, pg 10.

30. In fact, when negotiations first began with Bennett and Spector, Fameco requested information regarding these transaction for which they had not "Earned" a commission, so that Fameco could determine the status of the transactions, and negotiate a percentages of the commission to which Bennett and Spector could receive.

31. However, Bennett refused to provide such information, and instead continued to work for these Fameco clients without authorization and in an attempt to divert business away from Fameco.

32. In addition to making several misstatements in the Opposition Papers, as cited above, Bennett and Spector completely fail to address the fact that they have been, and are currently are, breaching the restrictive covenants contained in their Broker-Salesperson Agreements.

33. In fact, the profiles of Bennett and Spector on Winick's website, explicitly state they represent Fameco clients. See Declaration of Michael Levin previously submitted in support of motion for expedited discovery, Exhibit E.

34. Moreover, Fameco has recently obtained a blast e-mail dated November 13, 2012 from Bennett to, among others, one of Fameco's employees Jay Miller, that establishes that Bennett is still actively representing Pep Boys, a "Covered Client," within the geographic region prohibited by the Broker-Salesperson Agreement. A true and accurate copy of this e-mail is attached hereto as **Exhibit A**.

35. To my knowledge Spector never approached Fameco regarding any potential deals in which his family owned business S&D Development, LLC was involved.

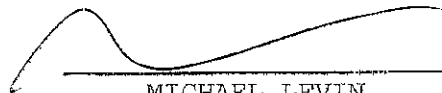
36. To my knowledge Spector never provided referrals to Winick Realty Group LLC prior to the June 13, 2012 e-mail attached to my original declaration as Exhibit B. Additionally, as a general matter, Fameco does not refer business to Winick.

37. There was an attachment to the e-mail contained in Exhibit C of my original declaration. It consisted of a list of approximately 500 of Fameco's closest client contacts in the area. Given the sensitive proprietary nature contained therein, it was intentionally omitted from the submission to the Court.

38. Fameco cannot properly assess the extent of defendants' actionable conduct, mitigate the harm it already has suffered, and prevent future injury without additional information that is primarily or particularly in the possession of defendants.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on November 26, 2012



MICHAEL LEVIN

EXHIBIT A

REDACTED

From: Tyler Bennett [mailto:tbennett@winickmail.com]

Sent: Tuesday, November 13, 2012 12:56 PM

To: Jay Miller

Subject: Pep Boys Actively Seeking Sites

Having trouble viewing this email? http://winick.us/2012/11/05/pep-boys/<http://campaign.r20.constantcontact.com/render?llr=tmrqv5fab&v=001EgdY2fhRL-UipBb6Zq-L_j9LXGjHfHXBTEVmYo2JZEhiVb1NDmiejtmhKcInBq-PUh_dNUyRUftjSeia1bH3Y3XHG1sJC5xhorDKXiCnBtG2mqqAIm26tz_7YzMik_GzBzUA5udzpchxJ_X60WPDC9Z5f6iOM1E>

[<http://ih.constantcontact.com/fs004/1105909532051/img/72.jpg>]

Pep Boys Site Submission Requirements

[<http://ih.constantcontact.com/fs184/1105909532051/img/325.jpg>]

- * Pep Boys Seeking Locations for both Super centers & Service and Tire Centers
 - * Publicly Traded Company on NYSE: "PBX"
 - * Over 740 owned and leased locations
 - * Currently in 35 States and Puerto Rico
 - * All Company Run Stores with Corporate Signature
 - * Currently operating over 7,000 services bays
- "Schedule an appointment today at the New York ICSC Show. Winick Realty Group Booth #157

Rhineland Gallery at The Hilton"

FOR FURTHER INFORMATION PLEASE CONTACT EXCLUSIVE BROKER:

Tyler Bennett
201-441-3511
tyler@winick.com<mailto:tyler@winick.com>

Pepboys Supercenter Site Submission Flyer<http://r20.rs6.net/tn.jsp?e=001ADkdbHXF6PEuFdPurlWijThgA0l3AL2cIeRNuXc3Fx_9iqUwMeNskthvcx1o5BJpOswt7VjNUCTgY5vLvSDKQKeYsCa9WMjdJ9CtBQLGL77WRcnqfnNOUsgykHQgawymF-MtMVI6xVvHzZK5nqRARInVGWPeZW0BybwrqaRvpAPZPsmvWrs6S-XCODJa5mhR>

Pepboys Service and Tire Center Site Submission Flyer<http://r20.rs6.net/tn.jsp?e=001ADkdbHXF6PEWx6A5-3wC4DkxcuJky9fuezuDb1IrwISLRrbZsVK3wZu9poPTyNK_8sYPse8DKoTu7CiAJStxqEgqLsIyyN7c1QGUFWeWQVnkilNsVZmRSMW6JQZgLMXz33vl_wWjgvjIR6txpDYvKtCB0aB1z-MopCJgYj9sdIrcg59Qqf9oS_4cTHRY1EYzN>

<http://winick.us/2012/11/05/pep-boys/>

[<http://ih.constantcontact.com/fs184/1105909532051/img/322.jpg>]

[<http://ih.constantcontact.com/fs184/1105909532051/img/324.jpg>]

THE LATEST LISTINGS FROM WINICK REALTY more properties<http://r20.rs6.net/tn.jsp?e=001ADkdbHXF6PGmAxKMyIrnCW6tDFnqCRUPBo-CWW3_k5BZg3mJzi-TKulgwUx6zB_y0rQYdSA8Jlqy4bH6xYCeAuMTW2leQ55br_nadWF7upBSEnpp4MAac7X6hsw4q1qb>
THE LATEST HEADLINES FROM WINICK DAILY more headlines<http://r20.rs6.net/tn.jsp?e=001ADkdbHXF6PH_w4ENVJfxGn5fK-CSvFgLnWni4ayQIzUejc2RRBORJe3soutbvZUaeVjytOD7vhcQJDQ_zfAanTkigWaF09fZtvWCurVF_XHHU3wmZEYdVw==>>

[http://img.constantcontact.com/letters/images/1101093164665/jmml_opgr1_img1.gif] <<http://visitor.r20.constantcontact.com/email.jsp?m=1105909532051>>

Forward email<<http://ui.constantcontact.com/sa/fwtf.jsp?llr=tmrqv5fab&m=1105909532051&ea=jmiller%40rasbrokerage.com&a=1111506814804>>
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This email was sent to jmiller@rasbrokerage.com by tbennett@winickmail.com | Update Profile/Email Address<[http://visitor.constantcontact.com/do?p=oo&mse=001xTbFH0kX3uF6jljyC7ozULV_2aW2dh9vEYft2SkhoQs%3D&t=001laKxOYaoUW4o8-SD3WA3SA%3D%3D\(=001FCSS65SMrsI%3D&llr=tmrqv5fab](http://visitor.constantcontact.com/do?p=oo&mse=001xTbFH0kX3uF6jljyC7ozULV_2aW2dh9vEYft2SkhoQs%3D&t=001laKxOYaoUW4o8-SD3WA3SA%3D%3D(=001FCSS65SMrsI%3D&llr=tmrqv5fab)>
| Instant removal with SafeUnsubscribe<[http://visitor.constantcontact.com/do?p=un&mse=001xTbFH0kX3uF6jljyC7ozULV_2aW2dh9vEYft2SkhoQs%3D&t=001laKxOYaoUW4o8-SD3WA3SA%3D%3D\(=001FCSS65SMrsI%3D&llr=tmrqv5fab](http://visitor.constantcontact.com/do?p=un&mse=001xTbFH0kX3uF6jljyC7ozULV_2aW2dh9vEYft2SkhoQs%3D&t=001laKxOYaoUW4o8-SD3WA3SA%3D%3D(=001FCSS65SMrsI%3D&llr=tmrqv5fab)>™ | Privacy Policy<<http://ui.constantcontact.com/roving/CCPrivacyPolicy.jsp>>.

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